REMARKS

Claims 58-104 are pending in the application. In the aforementioned Office Action, the Examiner alleged Applicants' response filed on June 16, 2008 as non-responsive under MPEP § 821.03.

To begin with, there has not been any proper restriction requirement in this application. Yet, for the sake of argument, assuming that the restriction requirement in the prior actions were proper, it is respectfully submitted that Applicants' latest response is not inconsistent with MPEP § 821.03.

MPEP § 821.03 is essentially an elaboration of 37 C.F.R. § 1.145, which states:

> If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provide in §§ 1.144.

Here, Applicants' new claims 58-104 are basically directed to the same inventive subject matter as previously claimed, i.e., canceled claims 1-19, 27-34 and 46-57. Specifically, all the aforementioned claims concern with an access node which can be a base station. Under MPEP § 714, Applicants is entitled to rewrite and present new claims in response to an office action. As in this case, Applicants merely canceled claims 1-19, 27-34 and 46-57 and presented new claims 58-104 in Applicants' reply dated June 16, 2008 for re-consideration in response to the Examiner's rejection.

Nevertheless, the Examiner's attention is directed to relevant part of the MPEP § 814 which states:

> The Examiner must provide a clear and detailed record of the restriction requirement to provide a clear demarcation between restricted inventions so that it can be determined whether the inventions claimed in a continuing application are consonant with

the restriction requirement and therefore subject to the prohibition against double patenting rejection under 35 U.S.C. § 121.

As is in this case, Applicants may later file divisional applications of the non-elected claims. Without a proper restriction requirement, patents issued from Applicants' divisional applications could be later held invalid. *Geneva Pharms. Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1381, 68 USPQ.2d 1865, 1871 (Fed. Cir. 2003).

Applicants carefully studied the file record and found no clear and detailed record of the any restriction requirement as mandated under MPEP § 814.

Specifically, in reply to the Office Action mailed on June 13, 2006, Applicants' filed a response on December 15, 2005 but was denied entry as not responsive under MPEP § 821.03. The denial was improper in the first place because there had not been any restriction requirement by the Office prior to June 13, 2006. Instead, the restriction requirement and the denial of entry under MPEP § 821.03 were made in the same Office Action of June 13, 2006, wherein the paragraphs under the "Election/Restrictions" session merely reiterated the claims in verbatim and certainly is not "clear and detailed" as required under MPEP § 814.

Nor was there any clear and detailed restriction requirement in the latest Office Action of October 7, 2008. Again, the claims were merely repeated in the Office Action of October 7, 2008 with no rationale provided for support as to why the claim groups are independent and/or distinct.

In light of the forgoing, Applicants respectfully request reconsideration and entry of Applicants' reply filed on June 16, 2008. Further, should the Examiner maintain the restriction requirement, Applicants respectfully request a clear demarcation of the requirement put on record pursuant to MPEP § 817.

In the event of any fees that may be due or any overpayments that may be associated with this response, please charge or deposit the amount to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: November 11, 2008

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